

§ 101.18 Investigation of petition.

(a) Upon receipt of the petition in the Regional Office, it is docketed and assigned to a member of the staff, usually a field examiner, for investigation. The field examiner conducts an investigation to ascertain (1) whether the employer's operations affect commerce within the meaning of the Act, (2) the appropriateness of the unit of employees for the purposes of collective bargaining and the existence of a bona fide question concerning representation within the meaning of the Act, (3) whether the election would effectuate the policies of the Act and reflect the free choice of employees in the appropriate unit, and (4) whether, if the petitioner is a labor organization seeking recognition, there is a sufficient probability, based on the evidence of representation of the petitioner, that the employees have selected it to represent them. The evidence of representation submitted by the petitioning labor organization or by the person seeking decertification is ordinarily checked to determine the number or proportion of employees who have designated the petitioner, it being the Board's administrative experience that in the absence of special factors the conduct of an election serves no purpose under the statute unless the petitioner has been designated by at least 30 percent of the employees. However, in the case of a petition by an employer, no proof of representation on the part of the labor organization claiming a majority is required and the Regional Director proceeds with the case if other factors require it unless the labor organization withdraws its claim to majority representation. The field examiner, or other member of the staff, attempts to ascertain from all interested parties whether or not the grouping or unit of employees described in the petition constitutes an appropriate bargaining unit. The petition may be amended at any time prior to hearing and may be amended during the hearing in the discretion of the hearing officer upon such terms as he or she deems just.

(b) The petitioner may on its own initiative request the withdrawal of the petition if the investigation discloses that no question of representation exists within the meaning of the statute,

because, among other possible reasons, the unit is not appropriate, or a written contract precludes further investigation at that time, or where the petitioner is a labor organization or a person seeking decertification and the showing of representation among the employees is insufficient to warrant an election under the 30-percent principle stated in paragraph (a) of this section.

(c) For the same or similar reasons the Regional Director may request the petitioner to withdraw its petition. If the petitioner, despite the Regional Director's recommendations, refuses to withdraw the petition, the Regional Director then dismisses the petition, stating the grounds for dismissal and informing the petitioner of its right of appeal to the Board in Washington, DC. The petition may also be dismissed in the discretion of the Regional Director if the petitioner fails to make available necessary facts which are in its possession. The petitioner may within 14 days appeal from the Regional Director's dismissal by filing such request with the Board in Washington, DC; after a full review of the file with the assistance of its staff, the Board may sustain the dismissal, stating the grounds of its affirmance, or may direct the Regional Director to take further action.

§ 101.19 Consent adjustments before formal hearing.

The Board has devised and makes available to the parties three types of informal consent procedures through which representation issues can be resolved without recourse to formal procedures. These informal arrangements are commonly referred to as consent-election agreement followed by Regional Director's determination, stipulated election agreement followed by Board certification, and full consent agreement, in which the parties agree that all pre- and postelection disputes will be resolved with finality by the Regional Director. Forms for use in these informal procedures are available in the Regional Offices.

(a)(1) The consent-election agreement followed by the Regional Director's determination of representatives is one method of informal adjustment of representation cases. The terms of the agreement providing for this form

of adjustment are set forth in printed forms, which are available upon request at the Board's Regional Offices. Under these terms the parties agree with respect to the appropriate unit, the payroll period to be used as the basis of eligibility to vote in an election, and the place, date, and hours of balloting. A Board agent arranges the details incident to the mechanics and conduct of the election. For example, the Board agent usually arranges preelection conferences in which the parties check the list of voters and attempt to resolve any questions of eligibility. Also, prior to the date of election, the holding of such election shall be adequately publicized by the posting of official notices in the establishment whenever possible or in other places, or by the use of other means considered appropriate and effective. These notices reproduce a sample ballot and outline such election details as location of polls, time of voting, and eligibility rules.

(2) The actual polling is always conducted and supervised by Board agents. Appropriate representatives of each party may assist them and observe the election. As to the mechanics of the election, a ballot is given to each eligible voter by the Board's agents. The ballots are marked in the secrecy of a voting booth. The Board agents and authorized observers have the privilege of challenging for reasonable cause employees who apply for ballots.

(3) Customarily the Board agents, in the presence and with the assistance of the authorized observers, count and tabulate the ballots immediately after the closing of the polls. A complete tally of the ballots is made available to the parties upon the conclusion of the election.

(4) If challenged ballots are sufficient in number to affect the results of the election, the Regional Director conducts an investigation and rules on the challenges. Similarly, if objections to the conduct of the election are filed within 7 days after the tally of ballots has been prepared, the Regional Director likewise conducts an investigation and rules on the objections. If, after investigation, the objections are found to have merit, the Regional Director may

void the election results and conduct a new election.

(5) This form of agreement provides that the rulings of the Regional Director on all questions relating to the election (for example, eligibility to vote and the validity of challenges and objections) are final and binding. Also, the agreement provides for the conduct of a runoff election, in accordance with the provisions of the Board's Rules and Regulations, if two or more labor organizations appear on the ballot and no one choice receives the majority of the valid votes cast.

(6) The Regional Director issues to the parties a certification of the results of the election, including certifications of representative where appropriate, with the same force and effect as if issued by the Board.

(b) The stipulated election agreement followed by a Board determination provides that disputed matters following the agreed-upon election, if determinative of the results, can be the basis of a formal decision by the Board instead of an informal determination by the Regional Director, except that if the Regional Director decides that a hearing on objections or challenged ballots is necessary the Director may direct such a hearing before a hearing officer, or, if the case is consolidated with an unfair labor practice proceeding, before an administrative law judge. If a hearing is directed, such action on the part of the Regional Director constitutes a transfer of the case to the Board. Thus, except for directing a hearing, it is provided that the Board, rather than the Regional Director, makes the final determination of questions raised concerning eligibility, challenged votes, and objections to the conduct of the election. If challenged ballots are sufficient in number to affect the results of the election, the Regional Director conducts an investigation and issues a report on the challenges instead of ruling thereon, unless the Director elects to hold a hearing. Similarly, if objections to the conduct of the election are filed within 7 days after the tally of ballots has been prepared, the Regional Director likewise conducts an investigation and issues a report instead of ruling on the validity of the objections, unless the Director elects to hold a

hearing. The Regional Director's report is served on the parties, who may file exceptions thereto within 14 days with the Board in Washington, DC. The Board then reviews the entire record made and may, if a substantial issue is raised, direct a hearing on the challenged ballots or the objections to the conduct of the election. Or, the Board may, if no substantial issues are raised, affirm the Regional Director's report and take appropriate action in termination of the proceedings. If a hearing is ordered by the Regional Director or the Board on the challenged ballots or objections, all parties are heard and a report containing findings of fact and recommendations as to the disposition of the challenges or objections, or both, and resolving issues of credibility is issued by the hearing officer and served on the parties, who may file exceptions thereto within 14 days with the Board in Washington, DC. The record made on the hearing is reviewed by the Board with the assistance of its staff counsel and a final determination made thereon. If the objections are found to have merit, the election results may be voided and a new election conducted under the supervision of the Regional Director. If the union has been selected as the representative, the Board or the Regional Director, as the case may be, issues its certification and the proceeding is terminated. If upon a decertification or employer petition the union loses the election, the Board or the Regional Director, as the case may be, certifies that the union is not the chosen representative.

(c) The full consent-election agreement followed by the Regional Director's determination of representatives is another method of informal adjustment of representation cases.

(1) Under these terms the parties agree that if they are unable to informally resolve disputes arising with respect to the appropriate unit and other issues pertaining to the resolution of the question concerning representation; the payroll period to be used as the basis of eligibility to vote in an election, the place, date, and hours of balloting, or other details of the election, those issues will be presented to, and decided with finality by the Regional Director after a hearing con-

ducted in a manner consistent with the procedures set forth in § 101.20.

(2) Upon the close of the hearing, the entire record in the case is forwarded to the Regional Director. The hearing officer also transmits an analysis of the issues and the evidence, but makes no recommendations as to resolution of the issues. All parties may file briefs with the Regional Director within 7 days after the close of the hearing. The parties may also request to be heard orally. After review of the entire case, the Regional Director issues a final decision, either dismissing the petition or directing that an election be held. In the latter event, the election is conducted under the supervision of the Regional Director in the manner already described in this section.

(3) All matters arising after the election, including determinative challenged ballots and objections to the conduct of the election shall be processed in a manner consistent with paragraphs (a)(4), (5), and (6) of this section.

[70 FR 3477, Jan. 25, 2005, as amended at 70 FR 3477, Jan. 25, 2005]

§ 101.20 Formal hearing.

(a) If no informal adjustment of the question concerning representation has been effected and it appears to the Regional Director that formal action is necessary, the Regional Director will institute formal proceedings by issuance of a notice of hearing on the issues, which is followed by a decision and direction of election or dismissal of the case. In certain types of cases, involving novel or complex issues, the Regional Director may submit the case for advice to the Board before issuing notice of hearing.

(b) The notice of hearing, together with a copy of the petition, is served on the unions and employer filing or named in the petition and on other known persons or labor organizations claiming to have been designated by employees involved in the proceeding.

(c) The hearing, usually open to the public, is held before a hearing officer who normally is an attorney or field examiner attached to the Regional Office but may be another qualified Agency official. The hearing, which is non-adversary in character, is part of the